Supreme Court, U. S.
FILED
OCT 26 1978
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT
OF THE UNITED STATES

October Term, 1978

No. 77-1631

RESTON HOMEOWNERS ASSOCIATION,
Plaintiff-Appellee

v

JAMES L. RIDGILL AND JANIE E. RIDGILL
Defendants-Appellants

REHEARING UNDER RULE 58 OF THE ENTRY OF ORDER OF THE COURT ENTERED ON OCTOBER 2, 1978, DENYING JURISDICTION

James L. Ridgill
2516 Appaloosa Court
Reston, Virginia 22091

INDEX

	Page
STATEMENT OF THE CASE	1
PETITION UNDER JOHNSON v FLORIDA 391 US 596, 598 n	8
JURISDICTION OF THE VIRGINIA SUPREME COURT	9
THE QUESTIONS PRESENTED ARE SUBSTANTIAL	16
SUPERVENING EVENTS UNDER RULE 58	17
CERTIFICATE UNDER RULE 59	18
CONCLUSION AND PRAYER FOR RELIEF	18
CERTIFICATE OF SERVICE	18

APPENDIX 1: Copy of the petition filed April 21, 1978 with the jurisdictional statement

APPENDIX 2: Copy of Virginia Code Section 8.01-672

APPENDIX 3: Affidavit of Kenny in Fairfax County General District Court

APPENDIX 4: Order of Judge Cacheris in Fairfax County Circuit Limiting the issues to be tried herein

TABLE OF AUTHORITIES CITED

Cases

	page
Crowell v. Benson, 285 US 22, 52 S. Ct. 285, 76 L. Ed. 598 (1932)	11
Jackson v. Ludeling, 21 Wall 616,624 22 L. Ed. 492	17
Jernigan v. Capps, 187 Va. 73,78	14
Johnson v. Florida, 391 US 596,598	7-9
Lebold v. Inland Steel, 125 F. 2d 369 (7th Cir., 1941) cert, den., 316 US 675 62 S. Ct. 1045, 86 L. Ed. 1045 (1942)	16
Maguire v. Tyler, 8 Wall 650 19 L. Ed. 320	15
National Tea Co. v. Minn., 309 US 551, 60 S. Ct. 676 84 L. Ed. 920	16
National Tea Co. v. State 205 Minn 443, 286 NW 360 208 Minn 607, 294 NW 230	16
Neilson v. Lagow, 12 How 98,110 13 L. Ed. 909	15
Ridgill v. State Corp. Comm., 406 US 902, 92 S. Ct. 1609 31 L. Ed. 813 (1972)	3
Southern Pac. v. Bogert 250 US 483,492 39 S. Ct. 533,537, 63 L. Ed. 1099	17
Twin Lick Oil Co. v. Marbury, 91 US 587,588, 23 L. Ed. 328	16
Williams v. Bruffy, 96 US 176,187 (1877)	15

Constitutions

United States:	
Article 1, Section 10	11,16
Seventh Amendment	1
Virginia:	
Article IV, para. 1	9

Statutes

United States Code:	
Title 28, Section 1257 (2)	10
Virginia:	
Title 8, Section 464 (Title 8.01, Section 672)	10
Ti le 13.1, Section 206	17

Treatise

2 Cooley, Cons. Lim. (8th Ed.) 745	16
U. S. Supreme Court Rules:	
Rule 39 (4)	9
Rule 58	1,17

IN THE
SUPREME COURT
OF THE UNITED STATES

October Term, 1978

No. 77-1631

RESTON HOMEOWNERS ASSOCIATION,
Plaintiff-Appellee

v

JAMES L. AND JANIE E. RIDGILL,
Defendants-Appellants

ON APPEAL FROM THE SUPREME COURT
OF VIRGINIA

MOTION FOR REHEARING UNDER RULE 58 OF THE ENTRY OF ORDER OF THE COURT ENTERED ON OCTOBER 2, 1978, DENYING JURISDICTION

Pursuant to Rule 58 of the Supreme Court of the United States, appellants move the Court for rehearing from the entry of order of October 2, 1978, entered herein on the grounds hereinafter set forth.

STATEMENT OF THE CASE

Appellants own Lot 204, Section 4, Reston Virginia as set forth in the deed

thereto as evinced in Appendix B of the Jurisdictional Statement filed in this cause in the Supreme Court of the United States on April 21, 1978. This deed recites that appellants are members of a non-profit membership corporation known as Reston Second Homeowners Association whose charter was issued subject to the Deed of Dedication of Reston Sections Two and Four as set forth in Appendix C of the Jurisdictional Statement filed in this case on April 21, 1978. Both of the aforesaid deeds set forth that Reston Second Homeowners Association is the agent for enforcement of the covenants running with the land embodied in said deeds.

The Deed to appellants lot was recorded on July 25, 1969 as set forth in Appendix B of the Jurisdictional Statement filed in this cause in the Supreme Court of the United States on April 21, 1978. The Deed of Dedication of Reston Sections Two and Four was filed and recorded in Fairfax County, Virginia in May of 1966 as set forth in Appendix C of the Jurisdictional Statement filed in this cause in the Supreme Court of the United States on April 21, 1978.

In 1970, the then corporate mem-

ber of Reston Second Homeowners Association ---Gulf Reston, Inc.--- a stock corporation having voting control of the membership corporation of Reston Second Homeowners Association voted to and filed articles of consolidation for consolidating Reston First and Second Homeowners Associations into Reston Homeowners Association over defendants timely objections in violation of fiduciary duties to appellants appellants contend as set forth in appellants prior case in the Supreme Court of the United States in reference to this matter as recorded in U. S. Supreme Court Case 71-1135, 406 US 902, 92 S. Ct. 1609, 31 L. Ed. 813, (1972).

In this prior case, the State Corporation Commission of Virginia appears to have held it had no jurisdiction of Deeds which was in effect affirmed by the Supreme Court of Virginia. The Supreme Court of the United States in denying the appeal and writ of certiorari as at 406 US 902 in operative effect appears to have affirmed this position of the Virginia tribunals.

Defendants paid all assessments for 1970 thru 1973 under protest notify-

ing Gulf Reston thru its officers and agents on the Board of Directors of the Reston Homeowners Association that defendants considered the operation of the said Association to be outside the terms of the agency and contractual limitations of the deed to their lot and demanded that said officers and agents conduct the affairs of the Association within the terms of the contract strictly construed.

It appearing to defendants that the officers and agents as aforesaid were going to operate the said Association without regard to appellants instruction of their corporate agent, appellants have refused to pay any assessment pending litigation of the issues raised by them.

This case originated in the civil division of Fairfax County General District Court, a court not of record, by civil warrant and affidavit signed by the esteemed partner of Counsel of Record Horwatt--- a member of the Virginia Bar, one the esteemed Thomas S. Kenny stating under oath that he was agent of Reston Homeowners Association and that he was attorney and agent ofthe association familiar as such with the books of account and that an assessment of $60 and a late

charge of $12 had been duly fixed by the Board of Directors and was due and owing filed January 24, 1975, in the General District Court, see appendix 3 hereof.

A continuance was granted in the Civil Action 75-0803 which was assigned this case in Fairfax County General District Court. On March 3, 1975 defendants filed a motion forremoval of this case to the Fairfax County Circuit Court, filed an answer under oath and a counterclaim under oath. On or about March 4, 1975 alleged agent of the plaintiff corporation---Reston Homeowners Association---one the esteemed counsel in the Virginia tribunals, Mr. Kenny, filed an opposition to removal, a motion to strike the answer, a plea in abatement, a demurrer, a plea in bar, and a motion to dismiss the counterclaim. On or about March 7, 1975 appellants filed a motion to strike the affidavit, a motion to strike the demurrer to the counterclaim, an opposition to the plea in bar, a motion to strike appellee's motion to dismiss the counterclaim, and a motion to strike appell ee's plea in abatement to the counterclaim. These motions were heard on March 13, 1975. Counsel for defen-

dants, Mr. William R. Trenor, died on April 24, 1975. On May 22, 1975, Judge Robert C. Watson of the Fairfax County General District Court entered an order stating what issues would be tried and set May 29, 1975 for trial on the merits.

The case was heard on the merits by the Honorable Judge Morris of Fairfax County General District Court who ruled against appellants, who then perfected an appeal to the Fairfax County Circuit Court on June 5, 1975 with the appeal being dated June 11, 1975. Appellants served notice of intent to docket the case in the Circuit Court on March 4, 1976. The appellees under Date of July 6, 1976, allegedly served notice upon appellees and the Circuit Court issued an order thereon dated July 21, 1976. On August 4, 1976, a pre-trial hearing was held. On August 23, 1976 the Honorable James C. Cacheris entered an order limiting the issues to be tried. The case was tried on those issues, see appendix 4 hereof. The final order was rendered on November 22, 1976 and appellants filed notice of appeal and assignments of error on December 20, 1976. Appellants perfected an appeal to the Supreme Court of Vir-

inia re judgment order of Fairfax County Circuit Court entered November 22, 1976 by filing Notice of Appeal and Assignments of Error in the Fairfax County Circuit Court on December 20, 1976, and by the subsequent filing of a Petition for an Appeal in the Supreme Court of Virginia on March 21, 1977. The Virginia Supreme Court entered judgment against defendants on September 29, 1977 and denied a petition for rehearing on November 23, 1977. Defendants filed a Notice of Appeal under Rule 10 of the United States Supreme Court in the Supreme Court of Virginia and on Reston Homeowners Association on February 21, 1978. On April 21, 1978 appellants filed a printed brief and a petition for extension of time up to April 22, 1978 for docketing the brief (jurisidictional statement) citing Johnson v. Florida, 391 US 596,598 n wherein a 56 day extension was granted stating that the matter was not jurisdictional. The Court personnel held that the printed jurisdictional statement did not comply with the rules of the court as to size of the print or size of the paper. Forty copies of a printed jurisdictional statement complying with

the rules of the Court were accepted by the Court personnel and the case was docketed on May 16, 1978. Within the time allowed by the Rules of Court, Attorney Horwatt filed a Motion to Dismiss the appeal. On October 2, 1978, the Supreme Court of the United States entered an order denying jurisdiction and denying a writ of certiorari. Defendants-appellants present this motion for reconsideration or rehearing from that entry of order under Supreme Court Rule 58. It is the position of appellants that the Supreme Court of the United States has jurisdiction to hear this case for the reasons as hereinafter set forth.

THE PETITION OF APRIL 21, 1978 CITING JOHNSON v. FLORIDA, 391 US 596, 598 n

Under Rule 39 (4) of the Supreme Court of the United States, second sentence "If papers are filed in a form which is not clearly legible, the Clerk will require that new copies be substituted, but the filing shall not thereby be deemed untimely". Accordingly, since the papers or printed jurisdictional statement of April 21, 1978 filed by appellants were within the time limit of Johnson v. Florida, 391 US 596, 598 n of 60 days as

discretionary with the Court, appellants assumed that the docketing of the case was a granting of the petition thereunder. If not, appellants pray that the petition be granted since it does not appear to be jurisdictional. To do otherwise, defendants respectfuly contend, would be to exalt form over substance on jurisdictional and substantive legal questions.

Moreover, since the Court did not delineate specific reasons why it had no jurisdiction in its order in this case entered on October 2, 1978, appellants will now demonstrate jurisdiction in the Court below in the event that the issue of Rule 39 (4) and the Petition of April 21, 1978 under Johnson v. Florida is decided in appellants favor. See appendix 1.

JURISDICTION OF THE VIRGINIA SUPREME COURT

Under Article VI, para. 1 of the Virginia Constitution
the Virginia Supreme Court has appellate jurisdiction of Constitutional issues raised in the trial court. Appellant raised such issues in the trial court as more fully explained in the jurisdictional statement filed in this case in the Supreme Court of the United States on April 21, 1978. The issues presented in the

tribunals of Virginia under the Constitution of the United States have been adversely decided by those tribunals in violation of defendant-appellants rights under the Constitution of the United States and the Supreme Court of the United States has jurisdiction under Title 28 United States Code, Section 1257 (2) and para. 2103 and 2104 and parts IV and V of the Rules of this court.

The Virginia Supreme Court also had statutory jurisdiction of this appeal under Title 8, Section 464 of the Code of Virginia (now Title 8.01, Section 672 of the Code of Virginia set forth in the appendix 2 to this motion) under the corporate franchise issue, a title to realty question, and matters not merely pecuniary question in the substitution of agents in the rewriting of the deed to appellants lot as set forth in the appendix submitted in the original jurisdictional statement presented in the Supreme Court of the United States.

The Virginia Supreme Court was specifically asked to clearly delineate state law on the point but failed to do so. The Supreme Court of the United States has the authority to determine

questions of jurisdictional fact, see Crowell v. Benson, 285 US 22, 52 S. Ct. 285, 76 L. Ed. 598 (1932), particularly where as here federal constitutional rights are in issue, since it is a question of appropriate maintenance of the Federal judicial power in requiring the observance of constitutional restrictions such as under Article I, Section 10 of the Constitution of the United States.

In the Motion to Dismiss the appeal filed by Attorney Horwatt in this case he has alleged that no federal question is presented of a substantial nature and that the judgment rests on an adequate non-federal basis. It is the position of appellants that the deed to their lot sets forth that the relationship between appellants and appellees is contractual of a special nature, i. e. one of agency (see the fifth paragraph of the deed to appellant's lot). This agent (Reston Homeowners Association--- whether consolidated or constituent) has obtained state action in violation of their fiduciary duty to appellants which is unconstitutional under the Constitution of the United States. The questions presented are substantial and certainly

not frivolous. Appellant can be required to pay up to $800 per year in assessments under the terms of this corporate set up issued subject to a deed of dedication, which involves incorporation by reference documents not before the State Corporation Commission in the charter thus vitiating constitutional notice of what defendants and those situated like him can be made liable for.

One issue presented which is not frivolous and presents a substantial federal question is the authority of an attorney such as Mr. Horwatt to appear in the case and whether or not he owes a fiduciary duty to defendants particularly since the pleadings originally presented raised the issue of authorization by authorized parties to institute, prosecute and compromise or appeal this action or suit. The corporation whether consolidated or constituent such as Reston Homeowners Association owes defendant a fiduciary duty to disclose since the contract is one of agency. Any person acting for a corporate agent is a subagent who owes the same duty to disclose. Mr. Horwatt makes the bald allegation that the decision of the Virginia Courts

is based on adequate state grounds. Perhaps Mr. Horwatt if he is an agent within the scope of his authority can set forth what that ground is and where it is contained in the judgments or decisions of the Virginia tribunals.

Moreover, Mr. Horwatt makes the bald allegation that Reston Homeowners Association the appell ee in this case operates common areas and recreational facilities in Reston by virtue of certain covenants running with the land and all persons in Reston are automatically members of the association and are assessed an annual charge to support its operations alleging that appellants own such property and are accordingly members of appellee association.

Appellants contend that the covenants running with the land do not require them to be a member of any corporation other than Reston Second Homeowners Association which no longer exists. Nor do the alleged covenants set forth in the deed or the corporate charter require defendants to pay for any recreational facilities. The compulsory requirement by the State of Virginia and the fiduciaries such as the admissions of fiduciary

Horwatt (if he is in fact authorized to act under the terms of the contract at issue in this case) vitiate defendants 'Horwatt alleged' problems of proof. Moreover since appellee sued defendants, it is the position of defendant-appellants that the question is indeed a question of burden of proof but that appell ees have failed to prove that they are within the terms of the covenants in this assessment proceedings and thus should lose the case. Whoever would enforce covenants running with the land has the burden of proof that they are within the covenants, see Jernigan v. Capps, 187 Va 73, 78, and that the learned disposition of this case by the bench and bar of Virginia failed to correctly fix the burden of proof, i. e. on Reston Homeowners Association.

On the Seventh Amendment to the United States Constitution issue in the trial court, the Seventh Amendment does not permit of any construction that the appellant must appeal in order to protect Seventh Amendment rights particularly where the facts are as in this case, i. e, defendants were sued by an agent. Furthermore, this agent has repeatedly

refused to obey defendants instruction to obey the terms of the deed to defendants lot. This enforcement proceeding is unconstitutional under the Constitution of the United States, Article I, Section 10 which has been adversely decided against defendants and this extends to state action such as this corporate charter, see Williams v. Bruffy, 96 US 176, 183 (1877).

As to findings of fact by the tribunals of Virginia, perhaps 'fiduciary' Horwatt would be so good as to point out what those findings of fact were and where in the decisions of the Virginia tribunals those findings of fact exist. In Maguire v. Tyler, 8 Wall. 650, 19 L. Ed. 320, and Neilson v. Lagow, 12 How.98, 110, 13 L. Ed. 909 it was contended that the judgments rested on adequate state grounds but in neither was there an opinion of the state court. The Supreme Court of the United States found the state grounds not substantial or sufficient and reversed the judgment on the Federal question. All state action must be constitutional

Accordingly, appellants contend that the Virginia tribunals have necessarily rejected appellants federal rights

and the Supreme Court of the United States has jurisdiction to rule in this case; or in the alternative can vacate and remand to the Virginia Supreme Court for a more considered opinion, National Tea Co. v. Minn 309 US 551, 60 S. Ct. 676, 84 L. Ed. 920, and National Tea Co. v. State, 205 Minn 443,286 NW 360, and 208 Minn 607, 294 NW 30, and defendants request the Supreme Court to determine the case or to vacate and remand.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

The deed to appellants lot is a vested interest entitled to protection under Article 1, Section 10 of the U. S Constitution, and it is right and equitable for the government to recognize and protect it, 2 Cooley Cons. Lim. (8th ed.) 745. Varying the terms of this deed by substituting agents at the request of the agent is unlawful and inequitable. This deed could not be directly changed by an agent without consent of appellants. In Lebold v. Inland Steel, 125 F.2d 369 (7th Cir. 1941), cert. den. 316 US 675, 86 L. Ed. 1045, 62 S. Ct. 1045 (1942) the Court said directors are fiduciaries citing Twin Lick Oil Co. v. Marbury, 91 US 587, 588, 23 L. Ed. 328 and so are dominant

stockholders (members), So. Pac. v. Bogert, 250 US 483,492, 39 S. Ct. 533,537, 63 L. Ed. 1099. One in a fiduciary position cannot serve themselves first and the cestui second since their powers are in trust, Jackson v. Ludeling, 21 Wall 616, 624, 22 L. Ed. 492. They cannot thru a corporate entity violate the precept against serving two masters nor can they violate the rules of fair play by doing indirectly through the corporation what they cannot do directly. Thus this enforcement proceeding is illegal, unconstitutional and inequitable.

SUPERVENING EVENTS UNDER RULE 58

It appears that the U. S. Supreme Court during the week of Oct. 16-23, 1978 granted an appeal or writ of certiorari to 11 Boston assessment payers on similar corporate charter issues as presented by this case. Coercion of individuals to require them to pay something not within the terms of the contract such as for capital improvements and recreation as appears admitted by fiduciary Horwatt in his motion is improper for an agent appellants contend. Appellants contend The U. S.Supreme Court has jurisdiction and is requested to exercise its discre-

tion and hear the case.

CERTIFICATE UNDER RULE 58

Defendants certify that this motion is made in good faith and is not made for delay.

CONCLUSION AND PRAYER FOR RELIEF

Defendants respectfully insist the Supreme Court of the United States has jurisdiction and that the appeal and/or writ of certiorari should be granted. The defendants thus petition the Court to set aside its order of October 2, 1978 denying jurisdiction and the writ of certiorari and to grant one or the other. In the alternative defendants petition the Court to vacate the judgment of the Virginia Supreme Court and remand for a more considered opinion.

CERTIFICATE OF SERVICE

I certify that three copies of the foregoing motion were sent by first class mail postage prepaid on October 26, 1978 to each of the following: Reston Homeowners Association, c/o Micael S. Horwatt 11,800 Sunrise Valley Drive, Reston, Va. 22091, and to the Clerk of the Virginia Supreme Court and to Honorable Marshall Coleman, Attorney General of Virginia each of which are in the Supreme Court

Building Richmond, Virginia.

James Lee Ridgill, Jr.
2516 Appaloosa Court
Reston, Virginia

APPENDIX 1

IN THE SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C.

April 21, 1978

Reston Homeowners Association, Inc.)
Appellees) Case
v) No. _____
James L. and Janie E. Ridgill)
Appellants)

PETITION FOR EXTENSION OF TIME UP TO AND INCLUDING APRIL 22, 1978 FOR DOCKETING THE JURISDICTIONAL STATEMENT HEREIN IN SUPPORT OF NOTICE OF APPEAL TO THE SUPREME COURT OF VIRGINIA IN ITS CASE NO. 77-0371

To the Chief Justice and Justices of the Supreme Court of the United States:

Come now your petitioners James L. and Janie E. Ridgill in the above styled cause and file this their petition for leave to docket this case and in support of this petition set forth as follows:

The Attorney of Record for petitioners in the Virginia Courts is not a member of the Bar of the Supreme Court of the United States to your petitioners' knowledge. Thus the burden of going forward with this case fell upon your petitioner James Ridgill. Additional counsel was not feasible.

During the period of January-April, 1978 your petitioner James Ridgill had a heavy

case load as a primary examiner in the United States Patent Office and the time he could spend on this Jurisdictional Statement was mostly confined to weekends. During the months of January, February and the first portion of March of 1978 the inclement weather restricted your petitioners efforts to research the case in the Law Library of the Library of Congress since he was in some instances prevented from going there due to the weather. And these foregoing matters taken with the burden of drafting, printing and paying for the jurisdictional statement and its filling has militated against an earlier filing. And your petitioners contend they have been diligent.

Wherefore your petitioners believe that the ends of justice will be served by the docketing of this case at this time and pray that an extension of time for docketing the Jurisdictional Statement in Support of Notice of Appeal to the Virginia Supreme Court in its Case No. 77-0371 be extended up to and including April 22, 1978.

In further support of this prayer for leave to docket this case your petitoners believe that they timely filed a Notice of Appeal under Rule 10 of this Court by sending the said Notice first class mail postage prepaid to the Supreme Court of Virginia and to Reston Homeowners Association under date of February 20, 1978, see Enclosure 1 for a copy of said Notice. And this Notice of Appeal was sent to perfect an appeal or a writ of certiorari to obtain a review of the final judgment of the Virginia Supreme Court in its Case No. 77-0371 entered September 29, 1977 per Enclosure 2, and from the denial of a petition for rehearing entered November 23, 1977 by the Virginia Supreme Court, a copy of which is appended in Enclosure 3.

Your petitioners further evince their belief that an extension of time for docketing this case up to and including April 22, 1978 would not establish a new precedent because the Supreme Court of the United States in Johnson v. Florida, 391 US 596, 598 n permitted an extension of 56 days and stated that the question was not jurisdictional. Accordingly, your petitioners pray that this leave to docket be granted.

Respectfully submitted,

Janie E. Ridgill

James Lee Ridgill, Jr.

Enclosure 1 -- Notice of Appeal
Enclosure 2 -- Judgement of Virginia Supreme Court in its Case No. 77-0371 entered September 29, 1977
Enclosure 3 -- Order of Virginia Supreme Court entered November 23, 1977 denying a petition for rehearing in its Case No. 77-0371

CERTIFICATE

I certify that I am a member of the Bar of the Supreme Court of the United States and that on April 21, 1978, by first class mail postage prepaid I sent a copy of the foregoing petition for leave to docket the Jurisdictional Statement in Support of Notice of Appeal to the Supreme Court of Virginia in its Case No. 77-0371 along with a copy of Enclosures 1-3 to the said statement to each of the Honorable Marshall Coleman, Attorney General of Virginia, whose

address is the Supreme Court Building, Richmond, Virginia, and to Reston Homeowners Association, c/o Thomas S. Kenny, 11800 Sunrise Valley Drive, Reston, Virginia 22091. All parties required to be served have been served and a copy likewise to Clerk, Virginia Supreme Court.

James Lee Ridgill, Jr.
2516 Appaloosa Court
Reston, Virginia 22091

APPENDIX 2

8.01-672 CODE OF VIRGINIA

Jurisdictional amount. No petition shall be presented for an appeal from any judgement of a circuit court except in cases in which the controversy is for a matter of five hundred dollars or more in value or amount, and except in cases in which it is otherwise expressly provided; nor to a judgement of any circuit court when the controversy is for a matter less in value or amount than five hundred dollars, exclusive of costs, unless there be drawn in question a freehold or franchise or the title or bounds of land, or some other matter not merely pecuniary. (Code 1950, 8-464; 1977, c. 617).

APPENDIX 3

A F F I D A V I T

COMES NOW your deponent, THOMAS S. KENNY, having been duly sworn, and makes oath as follows:

1. He is attorney and agent for RESTON HOME OWNERS ASSOCIATION, a Virginia non-stock corporation, and as such is familiar with the books of account of such organization.

2. The defendants, JANIE and JAMES L. RIDGILL, are to the best of deponent's belief and knowledge, the owners of record of the following described premises located in Reston, Fairfax County, Virginia:

Section 4, Lot 204
Reston, Fairfax County,
Virginia
A/K/A 2516 Appaloosa Court

3. Such premises, described above, are subject to an annual assessment in favor of the Reston Home Owners Association as more fully set forth in certain protective covenants and restrictions contained in the original Deed of Dedication recorded in Deed Book 2761, Page 415, of the land records of Fairfax County, Virginia, and incorporated by reference in one or more deeds in defendants' chain of title, by which defendants have obligated themselves to pay the same when due.

4. Such annual assessment for the year 1974 was duly fixed at Sixty Dollars ($60.00) plus a late charge of $2.00 by the Board of Directors of the Reston Home Owners Association, and was due and owing on or before

March 31, 1974; but despite repeated requests by plaintiff, no part hereof has been paid by defendants.

5. The full amount of such assessment plus late charge is presently due and owing, and is not subject to offset or counter claim.

6. And this the deponent does verify.

_____
Thomas S. Kenny
Attorney and Agent

STATE OF VIRGINIA,

COUNTY OF FAIRFAX, to wit:

Subscribed and sworn to before me this ____ day of _____, 1975.

My Commission Expires:

_____ _____
Notary Public

APPENDIX 4

V I R G I N I A

IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

RESTON HOMEOWNERS ASSOCIATION, INC.)
Plaintiff)
vs)
JANIE E. RIDGILL and)
JAMES L. RIDGILL,)
Defendants)

PRE-TRIAL ORDER

THIS CAUSE came on this 12th day of August, 1976, for pre-trial hearing on the pleadings, and on various pleas and motions of both parties relating to plaintiff's original affidavit and defendants' answer and counterclaim under oath and was argued by counsel. Upon consideration whereof, it appearing to the Court that the following actions should be taken, it is ADJUDGED, ORDERED AND DECREED as follows:

1. Trial of this cause on the merits is set for October 19, 1976, at 10:00 AM or as soon thereafter as the case may be heard, and shall be limited to the following contentions and defenses:

a. Plaintiff contends that there is presently due and owing to it by defendants the sum of $60 consisting of a $60 annual assessment of homeowners dues for 1974;

Plaintiff bases it's contention on certain recorded covenants which it claims run with the land and bind the land of

defendants, and which it further claims it has authority to enforce;

b. Defendants contend that they are not subject to any covenants which are unreasonable or which are not within the strictly construed covenants of record within the chain of title of Lot 204, Section 4, Reston, as recorded in Deed Book 3201, page 626 of the land records of Fairfax County, Virginia, and defendants further contend that they are not members of Reston Homeowners Association because:

(1) plaintiff or its successors are not parties to said covenants;

(2) plaintiff or its successors is not agent defendants within the terms of said covenants;

(3) affirmative covenants such as the payment of a $60 assessment in this action are not enforceable in Virginia;

(4) the records of Reston Homeowners Association such as its charter, by-laws, minutes of its meetings -- whether Directors or Members meetings -- are not recorded in the chain of title of Lot 204, Section 4, recorded as aforesaid;

(5) enforcement of this $60 assessment is an unconstitutional variation of the deed to Lot 204, Section 4, Reston, as recorded as aforesaid, under Article 1, Section 10 of the Constitution of the United States;

(6) the jurisdictional and removal statutes under which the Fairfax County

General District Court operates are unconstitutional under the Seventh Amendment of the Constitution of the United States;

(7) Reston Homeowners Association is no more than a third party beneficiary and cannot enforce any contract on defendant other than those set forth by defendants in said chain of title of Lot 204, Section 4, Reston;

(8) reasonable standards are not set forth in said covenants for ascertaining how said assessments are to be determined, apportioned, or spent, and are therefore void as being unconstitutional and indefinite.

c. Cut-off date for discovery is set as October 1, 1976.

d. Plaintiff expects to call three or four witnesses and defendants expect to call a like number;

2. And this cause is continued to October 19, 1976.

Enter: _____

_____
Judge